FILE COPY

No. 262

In the Supreme Court of the United States

October Term, 1965

LOUIS J. BECKER, COLLECTOR OF INTERNAL REVENUE,
PETITIONER

v.

ST. LOUIS UNION TRUST COMPANY, A CORPORATION, AND WILLIAM BOYCE GUY, EXECUTORS OF THE ESTATE OF WILLIAM EVANS GUY, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	6
Reasons for granting the writ	7

CITATIONS

Cases:	
Helvering v. *Duke*, 290 U. S. 591	8
Helvering v. *St. Louis Union Trust Co.* (*Orthwein Estate*), No. 25, Oct. Term, 1935	7, 8, 9
Hertz v. *Woodman*, 218 U. S. 205	8
Statute:	
Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 302 (U. S. C. App., Title 26, Sec. 1094)	3

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

LOUIS J. BECKER, COLLECTOR OF INTERNAL REVENUE, petitioner

v.

ST. LOUIS UNION TRUST COMPANY, A CORPORATION, and William Edwin Guy, executors of the estate of William Evans Guy, deceased

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of Louis J. Becker, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered in the above cause on March 13, 1935, reversing the judgment of the District Court.

OPINIONS BELOW

The opinion of the District Court (R. 16) is not officially reported. The opinion of the Circuit Court of Appeals (R. 124) is reported in 76 F. (2d) 851.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 13, 1935. A petition for rehearing was denied on April 19, 1935. (R. 145.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The decedent declared himself trustee of certain personal property for each of his four children in four identical trust instruments. He reserved to himself as trustee the same rights and power in respect to the management of the trust property that he had with respect to property owned absolutely by him. Each trust instrument provided that if the beneficiary should die before the settlor, the trust property should revert to the settlor and become his immediately and absolutely; or if the settlor should die before the beneficiary, then the trust property should become the beneficiary's immediately and absolutely, and in either case the trust should cease. The question presented is:

Whether the property so transferred in trust by the decedent should be included in his gross estate because the transfer (a) was made in contemplation of death or (b) was intended to take effect in possession or enjoyment at or after the settlor's death within the meaning of Section 302 (c) of the Revenue Act of 1926.

STATUTE INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—
>
> (a) To the extent of the interest therein of the decedent at the time of his death;
>
> * * * * *
>
> (c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *
>
> * * * * *
>
> (h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.
>
> * * * * *

(U. S. C. App., Title 26, Sec. 1094.)

STATEMENT

The facts, as found by the District Court (R. 17–20), may be summarized as follows:

In 1921, William Evans Guy, the decedent, who was then 77 years old, executed four separate declarations of trust by the terms of which he conveyed to himself as trustee certain securities for the benefit of each of his four children. (R. 17.) The four declarations of trust were identical in form with the exception of the name of the party for whose benefit the trust was created. (R. 18.) They gave the settlor the same rights and power in respect to the management and control of the trust property as he had with respect to property owned absolutely by him. (R. 18–19.) The settlor, who was also the trustee, could pay the beneficiary as much of the income as he saw fit. Any income not distributed was added to the principal. (R. 19.)

Paragraph 6 of the trust instrument provided as follows (R. 19):

> (a) If the said beneficiary should die before my death, then this trust estate shall thereupon revert to me and become mine immediately and absolutely, or (b) if I should die before her death, then this property shall thereupon become hers immediately and absolutely and be turned over to her and in either case this trust shall cease.

At the time of the execution of the declarations of trust, the decedent was a retired business man but was active in the management of his personal investments; was under the care of a physician, for usual minor ailments, from 1917 until 1928 when he died; was having periodic physical examinations

made by the Life Extension Institute; was normally interested in longevity, and had many times stated that he expected to live to be 90 years of age. At the time of the creation of the trusts, the decedent was a widower, the father of four children, all of whom were then over the age of 21 years, and each of whom was made the sole beneficiary in one of the separate trusts. (R. 17.)

The District Court also found as a fact that the property in the trusts would have reverted to the decedent in the event of the death of the named beneficiary prior to the death of decedent and that none of the beneficiaries named in the trust instruments acquired custody, control or title to the property held in trust until the death of the decedent. The title to the beneficiaries was contingent upon their survival of the decedent, and the motive of decedent in creating the trusts was to decrease his income tax by distributing a portion of his property among the four trusts, thus avoiding the high rate for large incomes, and at the same time to make provision for the distribution of the property to his children at decedent's death. (R. 20.)

The decedent originally transferred bonds of a par value of $72,000 to each of the four trusts, and from time to time made additions to each of the trusts, so that at the time of his death the property held by the four trusts was of the aggregate value of $994,195. The Commissioner of Internal Reve-

nue determined that this amount should be added to the gross estate, which resulted in the additional tax of $94,022.25. The estate paid this amount and upon the rejection of a claim for refund filed suit. The jury was waived and the cause submitted to the court. (R. 17.)

The District Court concluded as a matter of law that the property constituting the corpus of the four trusts was transferred in contemplation of death and that the transfer was intended to take effect in possession or enjoyment at or after his death. Therefore, it was held that the value of the trust property was properly included in his gross estate. (R. 20–21.) The executors of the decedent appealed to the Circuit Court of Appeals, which reversed the decision of the District Court and held that the property transferred in trust should not be included in the decedent's gross estate. The Collector of Internal Revenue filed a petition for rehearing, which was denied on April 19, 1935.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the transfers by trust were not made in contemplation of death within the meaning of Section 302 (c) of the Revenue Act of 1926.

2. In holding that the transfers by trust were not intended to take effect in possession or enjoyment at or after the decedent's death within the

meaning of Section 302 (c) of the Revenue Act of 1926.

3. In failing to hold that the value of the property which had been transferred in trust should be included in the gross estate of the decedent under Section 302 (c) of the Revenue Act of 1926.

4. In reversing the decision of the District Court.

REASONS FOR GRANTING THE WRIT

1. The instant case is similar to *Helvering* v. *St. Louis Union Trust Co.* (*Orthwein Estate*), No. 25, October Term, 1935, in which this Court granted certiorari on May 20, 1935, and which is now pending on the merits. In that case the decedent during his lifetime created a trust to pay the income to his daughter during her life, with remainders over after her death. The indenture provided that the trust should terminate if the daughter predeceased the settlor and that the trust estate should be paid over to the settlor, if living. If the grantor were not living, then the income should be paid to the settlor's wife for life, with remainders over. In the instant case, the decedent during his lifetime conveyed to himself as trustee certain securities for the benefit of each of his four children. The decedent could pay the beneficiary as much of the income as he saw fit, and any income not distributed was added to the principal. If the beneficiary should die before the settlor, then the trust estate should revert to the settlor

and become his immediately and absolutely; or if the settlor should die before the beneficiary, then the property should become the beneficiary's immediately and absolutely, and in either event the trust should cease. While the *Orthwein Estate* case arises under the Revenue Act of 1924, there are no material differences between that Act and the Revenue Act of 1926.

2. The instant case is also similar to the case of *Helvering* v. *Duke,* 290 U. S. 591, in which this Court divided equally, resulting in an affirmance of the decision of the lower court. In that case the decedent during his life conveyed certain property to himself as trustee for the benefit of his daughter. The trust instrument gave the decedent broad powers as trustee to invest and reinvest. It also provided that if his daughter should die in the lifetime of the settlor the trust should cease and all the trust property should revert to the settlor absolutely. The *Duke* case is not an authority on account of the equal division of this Court. *Hertz* v. *Woodman,* 218 U. S. 205, 213–214. This case affords an opportunity to clear up the existing uncertainty due to the *Duke* case.

3. The decision of the court below to the effect that the transfers in trust by the decedent were not made in contemplation of death is erroneous. The court said that this was essentially a question of fact, and reversed the decision of the District Court on the ground that there was no evidence to support the finding that the transfers were made in con-

templation of death. The court below stated that according to the evidence the decedent was actuated by two motives: (1) to make his children independent, and (2) to avoid high surtaxes upon his income, and that both of these motives were intimately associated with life. But these motives relate only to the creation of the life estate. They do not explain the distribution of the corpus of the trust estate at the death of the decedent. While there is no direct evidence in the record as to the reason for that provision in the trust instrument, the instrument speaks for itself. Moreover, that provision relating to the distribution of the corpus at the death of the decedent supports the finding of fact by the District Court that one of the motives of the decedent in creating the trusts was to make provision for the distribution of the property to his children at his death.

If this Court grants the petition for a writ of certiorari in the instant case, we expect to urge this specification of error in the alternative as ground for the reversal of the judgment of the Circuit Court of Appeals.

In view of the fact that this Court granted the petition for a writ of certiorari in *Helvering* v. *St. Louis Union Trust Co.* (*Orthwein Estate*), we respectfully submit that the petition in this case should be granted.

STANLEY REED,
Solicitor General.

JULY 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935